

U.S. EPA  
EPA West (AIR Docket)  
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Room B 108  
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Washington, DC 20460

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Via e-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), attention docket ID. No. OAR-2004-0094 or  
<http://www.epa.gov.edocket>

RE: Comments on the Proposed Changes to the Requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAPs) Which Would Limit the Availability of Information to the Public and Rescind the Requirement to Implement Plans for Minimizing Emissions of Hazardous Pollutants During Periods of Startup, Shutdown, And Malfunction (SSM Plans), 40 CFR Part 63, et. seq.

Docket ID No. OAR-2004-0094

Administrator Johnson:

We appreciate the opportunity to provide comments on the proposed changes to the NESHAPs rules, 40 CFR Part 63. As the City of Houston is near the greatest concentration of companies in the refining and petrochemical industries in the country, it is of great concern to us that EPA's SSM proposal would undermine the fundamental purpose of NESHAP regulations. In essence, it makes no sense to require companies to develop plans for minimizing emissions of HAPs during periods of SSM and then **NOT be required** to implement the plans.

It makes even less sense to impose burdensome requirements on the public to obtain the plans so that they can assure themselves that nearby plants are really ready and prepared to adequately handle and substantially abate emissions when most accidents unexpectedly occur. In this year alone, in addition to almost 2,000 reported emissions events, including many in the SSM category, in the Houston area, there have been three significant fires or explosions in the Houston-Galveston-Brazoria area that dramatize our concern. This is not a recent phenomenon; significant accidents happen at these large and complex plants with some frequency and accidents will happen again. Regarding making the plans available to the public, EPA has tipped the scales in the wrong direction. Weighing the minimal burden on the plants to make these SSM plans

available against the right to know of the public, surely scales should tip towards the public's right to have easy access to these plans, which affect their health and safety.

Instead of providing easy access to the SSM plans, EPA's proposed changes to the SSM plan requirements in 40 CFR 63 will make these documents, documents which are of particular interest to the community around a major source of hazardous air pollutants, very difficult to obtain, especially since the SSM plans will no longer need to be submitted to a regulatory agency. This means, practically, the public will not be able to obtain the plans. Surely one of the goals of the regulations is to reassure the public that the SSM plans are in place, that the plans contemplate reasonable contingencies with sound and suitable safety alternatives when you need them the most. The plans should be verifiable, minimize excess emissions and be readily accessible.

The primary purpose of the SSM plans is to ensure that when startups, shutdowns and malfunctions occur, the sources of hazardous air pollutants have and follow a well thought out plan to minimize emissions and protect the public. There is a general duty requirement that states that all subject sources must maintain and operate their equipment in manner consistent with good practices for minimizing emissions (see 40 CFR 63.6(e)(1)(i)). The SSM plan facilitates the evaluation of the general duty requirement by clarifying and identifying the maintenance and operation practices during startup, shutdown and maintenance events that are consistent with good practices for minimizing emissions. Without a requirement to implement and follow a SSM plan, the general duty requirement is very subjective and vulnerable to interpretation at will. The SSM plans, if implemented, provide for some certainty, some baseline, so that the standard that the regulated community will be held to is clear. The absence of a requirement to implement a SSM plan significantly burdens regulatory agencies; the regulatory agencies will have to spend additional time and effort to assess compliance with the general duty requirement, if the plans are not automatically provided to the agencies and if the companies are not held to the requirement to implement the plans.

One of the other stated purposes of the SSM plan is to reduce the reporting burden on the regulated community as the result of startups, shutdowns and malfunctions (see 40 CFR 63.6(e)(3)(i)(C)). Currently, regulated entities are only required by 40 CFR 63 to submit reports on specific startup, shutdown and malfunction events when the SSM plan was not followed (see 40 CFR 63.6(e)(3)(iv)). Without a requirement to implement and follow a SSM plan, the regulation should require reporting for all startup, shutdown and malfunction events, so that the general duty requirement can be evaluated for each event.

Therefore, contrary to the intent of the proposed revisions to the NESHAPs rules, the companies would face a greater reporting and paper-handling burden.

In light of the impact that malfunctions have on ambient air quality, the effectiveness of SSM plans should be enhanced, not diminished. In fact, there should be a requirement for each source subject to SSM plan requirements to periodically and proactively review and update the plans. In the current regulation, the source is only required to update the SSM plan when the Administrator determines that there is a need to do so or when there was an event that the SSM plan did not adequately address.

In summary, EPA's proposed revisions to the SSM Plan requirements in the NESHAP rules would:

1. Unnecessarily limit the public's access to information which should be available to the public and imposes no significant burden on the regulated community to provide;
2. Diminish the value of the SSM Plans because the companies would not be held to the requirement to implement the plan;
3. Increase the burden on the regulatory agencies because they would not have the plans available until there was some record of problems at the regulated entity; and
4. Impose a greater burden on the regulated community to know that source actions met the general duty requirement to minimize emissions during startups, shutdowns and malfunctions.

For all these reasons, the changes to the SSM requirements proposed by EPA should not be adopted.

Thank you for the opportunity to comment on these rules.

Sincerely,

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